Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Extending Wireless Telecommunications Services to Tribal Lands	))	WT Docket No. 99-266

COMMENTS OF BELL ATLANTIC MOBILE, INC.

Bell Atlantic Mobile, Inc. ("BAM") submits these initial comments on the Commission's proposals to make changes in its rules that are intended to promote new wireless service to Indians living on tribal lands.[1]

Earlier this year, the Commission issued a Public Notice which asked for input on actions that it could take to promote the wider provision of wireline and wireless telecommunications services to tribal lands in the states of Arizona and New Mexico.[2] BAM's affiliate in those states filed comments advocating several changes in Commission rules that should be made to promote increased wireless

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1 *Extending Wireless Telecommunications Services to Tribal Lands, Notice of Proposed Rulemaking,* WT Docket No. 99-266, FCC 99-205 (rel. August 18, 1999) *("Notice").* A summary of the *NPRM* appeared in the *Federal Register* on September 10, 1999, setting a comment date of November 9, 1999. These comments are thus timely.

2 *Overcoming Obstacles to Telephone Service for Indians on Reservations,* BO Docket No. 99-11, DA 99-430 (rel. March 2, 1999).

service to these areas.[3] This new rulemaking proceeding, while it addresses tribal lands in all states, focuses on the same important goal: to increase access to communications services by those who currently lack such access.

As a longtime provider of cellular service in many areas of the nation, BAM believes that wireless technologies can help to "bridge the gap" between those citizens that enjoy access to the full range of existing communications services and those that do not. It agrees with the Commission that modifying existing regulatory requirements will promote these public interest goals. As set forth below, however, BAM believes that many of the deregulatory actions the *Notice* proposes will likely prove to have limited benefit. It thus recommends that the Commission take several other actions that are likely to prove more effective in promoting expanded wireless service to Indians on tribal lands.[4]

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3 BO Docket No. 99-11, Comments of Southwestco Wireless, L.P., filed May 28, 1999. Those comments are incorporated herein by reference.

4 BAM also believes that changes in the Commission's universal service program, including specific actions to remove the obstacles that have frustrated wireless carriers' participation in universal service, will be much more helpful in promoting wider access to wireless service by residents of underserved areas, including tribal lands. The Commission has requested comments specific to the universal service program in a separate docket. *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking,* CC Docket No. 96-45, FCC 99-204 (rel. September 3, 1999). BAM will submit its proposals for the universal service program in that docket.

1. License the 700 MHz Bands for the Deployment of 3G Services.

Section 706 of the 1996 Telecommunications Act directed the Commission to monitor the pace of development of "advanced" telecommunications services and also to take steps to promote the availability of advanced services to all Americans. The Commission recently voiced its concern that broadband technologies and advanced services are not widely available in rural areas.[5] There is a pending proceeding which presents a major opportunity to address that problem by allowing the licensing of spectrum that can be used for advanced wireless services and make those services available nationwide. BAM urges the Commission to complete that proceeding promptly by adopting rules that will facilitate new service to underserved areas.

In June 1999, the Commission proposed licensing and service rules for the 746-764 and 776-794 MHz bands.[6] The record in response to the Commission's proposals showed that wireless carriers need significant additional spectrum if they are to be able to provide advanced services at speeds that customers desire. With that spectrum, wireless carriers will be better positioned to deploy such services to rural areas (including tribal lands) as well as urban areas. BAM and many other

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5 *Local Competition and Broadband Reporting, Notice of Proposed Rulemaking,* CC Docket No. 99-301, FCC 99-283 (rel. October 22, 1999), at ¶ 8.

6 *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Notice of Proposed Rulemaking,* WT Docket No. 99-168, FCC 99-97 (rel. June 3, 1999).

commenters thus recommended that the Commission license this spectrum exclusively for "third-generation" terrestrial mobile services, and not permit broadcast use of the bands, because doing so would effectively preclude its use for 3G wireless services.[7] BAM and others also recommended that carriers be eligible to bid on this new spectrum without being subject to a "spectrum cap," the same "open eligibility" policy the Commission has used for other recently-licensed spectrum.[8] By promptly completing the 700 MHz licensing proceeding, dedicating those bands to meet the rapidly growing demand for advanced wireless services, and not imposing restrictions on the ability of all interested providers to bid for that spectrum, the Commission will create a new spectrum resource for meeting the demand for advanced services in all areas of the nation, as Section 706 of the Communications Act mandates.

2. Permit Horizontally-Polarized Cellular Antennas. Section 22.367(a)(4) of the Commission's rules currently prohibits cellular carriers from deploying horizontally-polarized antennas for analog service, which as a practical matter restricts the polarization of combined digital/analog cell sites. This is an anachronistic rule left over from the detailed technical regulation that was imposed on cellular industry at its inception. In recent years the Commission has correctly

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7 WT Docket No. 99-168, Reply Comments of Bell Atlantic Mobile, filed August 13, 1999, at 2-8; AirTouch Comments at 9; Intek Global Comments at 2.

8 *E.g.*, BAM Reply Comments at 11-12; AirTouch Comments at 22-24; Rural Telecommunications Group Comments at 9-10.

observed that such rules can inhibit innovation, and it has not imposed them on new technologies. For example, PCS providers are not subject to this limit or in fact to any antenna polarization limits.[9] The prohibition on horizontally-polarized antennas directly impedes effective service coverage to all areas, including rural areas and Indian lands.

More than a year ago, Andrew Corporation filed a petition for rulemaking which asked that the prohibition on horizontally-polarized cellular antennas be repealed.[10] In response to a Commission public notice of the petition, BAM and other parties filed comments and reply comments supporting removal of the rule.[11] The petition was unopposed. AirTouch argued that the record was sufficient for the Commission to repeal the rule without further delay. BAM agrees. Eliminating Section 22.367(a)(4) will enhance cellular carriers' ability to offer expanded service, and will thus promote the Commission's goals in this proceeding to expand wireless service on tribal lands.

3. Declare that Fixed Wireless Services Provided by CMRS Providers Are to be Regulated as CMRS. Subjecting new competitive wireless service to

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9 *See Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order,* GEN Docket No. 90-314, 8 FCC Rcd 7700 (1993).

10 Amendment of Section 22.367(a)(4) of the Commission's Rules; Petition for Rulemaking of Andrew Corporation, filed September 18, 1998.

11 *E.g.,* AirTouch Communications, Inc. Comments, filed December 3, 1998; BAM Reply Comments, filed December 16, 1998.

anything more than minimal regulation would increase costs as well as decrease incentives for wireless carriers to enter underserved areas and seek to attract customers without phone service. In 1996, the Commission determined that CMRS providers could offer fixed services over their licensed spectrum. It also sought comment on whether to apply the deregulatory model of CMRS to those fixed wireless services, and tentatively concluded that it would presume that services offered by a CMRS provider would be regulated as CMRS.[12] The Commission has, however, not completed that proceeding.

CMRS providers must anticipate and factor in the risks of being regulated as landline carriers when offering wireless local loop and other services to underserved areas. The existing regulatory uncertainty is a disincentive for wireless operators to make the network investments that expanding into underserved areas requires. The Commission should conclude the CMRS fixed services rulemaking, and confirm that CMRS providers will continue to be subject to the regulatory framework for CMRS, whether they use their licensed spectrum to offer fixed, mobile, or hybrid wireless services.

4. Make Only Competitively-Neutral Changes to Technical Rules. The *Notice* (at ¶ 21) asks whether the existing height and power limits for PCS and

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12 *Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rulemaking,* WT Docket No. 96-6, 11 FCC Rcd 8965 (1996).

other wireless services should be raised to permit more widely spaced towers, on the theory that this may promote service to remote or sparsely populated areas. While BAM agrees that such changes can fulfill the goals of this proceeding, it is concerned that the *Notice* does not explicitly recognize the importance of ensuring that any such changes be made only on a competitively-neutral basis.

Section 332 of the Communications Act was adopted in part to achieve the pro-competitive results of "regulatory symmetry" among different CMRS carriers. When the Commission implemented Section 332 by rewriting its technical and operational rules for CMRS, it stressed the public interest benefits of consistent, symmetrical rules: "Were we to take a narrower view, disparate technical and operational rules might remain in effect, to the detriment of competition and, thus, to consumers, because differences in these rules could distort competition by providing advantages to some carriers and imposing handicaps on others."[13]

The *Notice,* however, focuses on PCS systems and does not discuss a corresponding increase in power limits for cellular base stations. Id. at ¶ 22. If PCS systems are to be authorized to operate at higher power in rural or underserved areas, cellular and other competitive wireless systems must be accorded the same flexibility to operate at higher power.

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13 *Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Third Report and Order,* 9 FCC Rcd 7988, 8024 (1994).

5. Liberalized Operational Rules Should Apply to Providing Service in Licensed Areas Encompassing Tribal Lands. If the Commission decides to liberalize power limits and other existing operational rules, it should not restrict those changes to apply only to service on tribal lands. As a practical matter, as the *Notice* acknowledges, tribal lands do not match at all the licensed geographic areas of cellular, PCS and other wireless carriers and, in and of themselves, will rarely provide an economically viable service area. A wireless provider is unlikely to be able to design a particular system solely for a single reservation or (given the scattered nature of reservations) for multiple reservations. Instead, the carrier will need to develop its system to serve its geographic licensed area that encompasses those lands. Moreover, should the Commission decide that new operational rules may promote service to tribal lands, that same rationale would hold equally true for areas surrounding Indian reservations, which are typically characterized by similar demographic and economic conditions and which thus also often lack extensive wireless service or choice among wireless providers. The Commission should thus apply any changes in its rules to the licensed service area encompassing the tribal land (whether it be, for example, an MSA, RSA, or BTA).[14]

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14 The Commission recently followed a similar approach in the spectrum caps rulemaking, in which it adopted a liberalized rule for predefined geographic licensed areas. It raised the maximum amount of spectrum any carrier could hold in providing service in RSAs, on the grounds that this action would promote services to the areas of the nation which are most in need of additional wireless services. *1998 Biennial Regulatory Review: Spectrum*

(continued...)

6. Do Not Require Carrier-Tribe Agreements. The Commission should modify its rules when it finds that these changes will help promote service to tribal lands and other underserved areas. But the *Notice's* proposal to consider requiring a "binding agreement between the licensee and the affected tribe" will only undermine the benefits of these changes. First, the *Notice* (at ¶ 41) recognizes that "as a practical matter, wireless carriers are unlikely to be able to provide service to tribal lands without obtaining the consent of tribal authorities to operate on reservation lands." BAM's experience in providing service to Indian lands confirms this point. Given that consent is required in any event, requiring a formal agreement would be regulatory overkill. Second, forcing carriers and tribes to go through this additional formal procedure would only delay if not frustrate entirely the prompt expansion of service to tribal lands.

7. Do Not Allocate New Spectrum for Tribal Lands Alone. The *Notice* (at ¶ 43) asks whether there are underutilized frequency bands which could potentially be allocated for new wireless service to tribal lands and other unserved areas. It would, however, be unwise to take up issues of spectrum allocation in this docket. Spectrum policy should instead be set on a national basis, in a proceeding

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(...continued)

Aggregation Limits for Wireless Telecommunications Carriers, Report and Order, WT Docket No. 98-205, FCC 99-244 (rel. September 22, 1999). The Commission stated that its goal was "to secure the benefits of modern telecommunications services, including wireless services, for high-cost and rural areas." *Id.* at ¶ 84.

(such as the 700 MHz rulemaking discussed above) that enables the Commission and interested parties to consider competing needs and spectrum demands and develop the most appropriate national policies for licensing spectrum. For example, the Commission has announced it will soon begin a proceeding to identify new frequencies for "third-generation" mobile services, in response to the rapidly growing demand both in the United States and abroad for wireless technologies.[15] Attempting to find discrete blocks of spectrum that would be available for use only on Indian lands, in advance of or apart from that effort, could seriously complicate successful action in that important new proceeding.

Respectfully submitted,

BELL ATLANTIC MOBILE, INC.

By: 

John T. Scott, III
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 624-2500

Its Attorneys

Dated: November 9, 1999

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15 BAM urges the Commission to begin that proceeding as soon as possible. Other nations are already formulating policies for "3G" technologies. It is critical that the United States not fall behind in this process.